

Hiatt General, Inc. d/b/a Hiatt Electric-Hiatt Plumbing, and Hiatt Electric, Inc. and International Brotherhood of Electrical Workers, Local No. 112, AFL-CIO. Case 19-CA-12147

August 25, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

On February 17, 1981, Administrative Law Judge Earledean V. S. Robbins issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,¹ findings,² and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Hiatt General, Inc. d/b/a Hiatt Electric-Hiatt Plumbing, and Hiatt Electric, Inc., Yakima, Washington, its officers, agents, successors, and assigns, shall take the action

¹ Respondent excepts to the Administrative Law Judge's ruling at the hearing which permitted the General Counsel to amend the complaint by adding four 8(a)(1) allegations. Respondent contends that the complaint and amended complaint did not allege 8(a)(1) violations, that the original charge alleged only a derivative 8(a)(1) violation, and that the alleged violations are barred by Sec. 10(b) of the Act. Respondent also contends that the complaint as amended at the hearing, insofar as it alleges specific 8(a)(1) conduct, departs so drastically from the original charge, complaint, and amended complaint that Respondent was denied due process. We find no merit in Respondent's exception. The charge was filed on March 3, 1980, alleging, *inter alia*, that Respondent made threatening statements to employees concerning their employment. The complaint as amended at the hearing alleges 8(a)(1) violations occurring in October or November 1979, all within the 10(b) period. We note that counsel for the General Counsel apprised Respondent's counsel of the specific amendments to the complaint several days prior to the hearing, and that the protagonist of the 8(a)(1) violations was present and testified at the hearing after the amendments and relevant employee testimony.

² Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing her findings.

We also find totally without merit Respondent's allegations of bias and prejudice on the part of the Administrative Law Judge. Upon our full consideration of the record and the Administrative Law Judge's Decision, we find no evidence that she prejudged the case, made incorrect or prejudicial rulings, or demonstrated any bias or hostility against Respondent in her conduct of the hearing or her analysis and discussion of the evidence.

set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

Accordingly, we hereby notify you that:

WE WILL NOT refuse to bargain collectively with International Brotherhood of Electrical Workers, Local No. 112, AFL-CIO, as the exclusive collective-bargaining representative of all employees in the appropriate unit, by refusing to furnish the Union with requested financial information in order to substantiate our claim that we are financially unable to meet the Union's economic demands. The appropriate unit is:

All of our electrical worker employees at our Yakima, Washington, operations, excluding estimators, clerical employees, guards and supervisors as defined in Section 2(11) of the National Labor Relations Act.

WE WILL NOT interrogate employees as to their union activities and whether they intend to vote for the Union.

WE WILL NOT threaten employees that we will go out of business if they select the Union as their collective-bargaining representative.

WE WILL NOT promise employees better wages, equipment, and other working conditions if they withhold their support from the Union.

WE WILL NOT tell employees that their union activities are jeopardizing a planned wage increase.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights set forth above which are guaranteed by Section 7 of the National Labor Relations Act.

WE WILL, upon request and within a reasonable time, furnish the Union, its auditors, and accountants with all books and records containing financial information relevant to the substantiation of our claim that we are financially unable to meet the Union's economic demands.

HIATT GENERAL, INC. D/B/A HIATT
ELECTRIC-HIATT PLUMBING, AND
HIATT ELECTRIC, INC.

DECISION

STATEMENT OF THE CASE

EARLDEAN V. S. ROBBINS, Administrative Law Judge: This matter was heard by me in Yakima, Washington, on September 18, 1980. The charge was filed by International Brotherhood of Electrical Workers, Local No. 112, AFL-CIO, herein called the Union, and served on Respondent Hiatt General, Inc. d/b/a Hiatt Electric-Hiatt Plumbing, herein called Hiatt General, on March 3, 1980. The amended complaint, which issued on September 3, 1980, alleges that Respondent Hiatt General and Respondent Hiatt Electric, Inc., herein called Hiatt Electric, violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, herein called the Act.

The principal issues herein are whether Respondents violated the Act by refusing to permit the Union's accountants to inspect Respondent's financial books in relation to Respondent's alleged claims of financial inability to meet the Union's bargaining proposals, and whether Respondent engaged in certain conduct violative of Section 8(a)(1) of the Act.

Upon the entire record including my observation of the demeanor of the witnesses, and after due consideration of the post-hearing briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Respondent Hiatt General, a Washington corporation with an office and place of business in Yakima, Washington, has been engaged in electrical and plumbing contracting work. During the 12-month period preceding the issuance of the complaint herein, which period is representative of all times material herein, in the course and conduct of its business operations, Respondent Hiatt General had gross sales of goods and service valued in excess of \$500,000 and during that same period purchased and caused to be

transferred and delivered to its facilities within the State of Washington goods and materials valued in excess of \$50,000 directly from sources outside said State, or from suppliers within said State which in turn obtained such goods and materials directly from sources outside said State.

On or about April 1, 1980, Respondent Hiatt Electric was formed to take over the assets, and assume the liabilities, of Respondent Hiatt General, and to engage in the same business operations, at the same location, selling the same products and/or services to substantially the same customers, and employing the same individuals as had been previously employed by Respondent Hiatt General. Darrell Hiatt is corporate officer, manager, and majority stockholder of both Hiatt General and Hiatt Electric.

The complaint alleges that Hiatt Electric has continued as the employing entity and is a successor of Respondent Hiatt General. Respondent Hiatt General and Respondent Hiatt Electric, herein collectively called Respondent, admit the formation and purpose of Respondent as described above but deny that Respondent Hiatt Electric is a successor to Respondent Hiatt General inasmuch as Respondent Hiatt General is still operating. Respondent admits, and I find, that Respondent Hiatt General is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Further, Respondent stipulates, and I find, that Respondent Hiatt General and Respondent Hiatt Electric are joint employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that the Union is now, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

On November 13, 1979,¹ the Union won a Board-conducted representation election and on November 26, 1979, was certified as the exclusive collective-bargaining representative of the employees of Respondent in the following unit:

All electrical worker employees of Respondent at its Yakima, Washington operations; excluding estimators, clerical employees, guards and supervisors as defined in the Act.

According to the undenied testimony of employee George Hughes and Ronald Lee Zike, 2 to 4 weeks before the election Darrell Hiatt had a meeting with Respondent's six electrician employees. According to Hughes, Hiatt said he understood that some of the employees wanted to go union. He said there was going to be an election and he wanted to know who was going to vote to go union. This question was directed generally at

¹ Unless otherwise indicated, all dates herein in October, November, and December are in 1979 and all other dates are in 1980.

all the employees, however, he specifically asked the foreman how he was going to vote. The foreman replied that he did not know.² Hiatt said that if they did select the Union as their collective-bargaining representative he was not going to bid any more jobs, that he would just finish the ones he had and quit. Some of the employees said they were not making enough money to pay their bills. Hiatt said he was considering a raise at the end of the year of about 50 cents.

Hughes further testified that he said the estimator had stated on several occasions that union shops had underbid Respondent and Respondent should be making enough money to pay them at least \$10 an hour instead of \$7 or \$8, that they could not live on the wages they were receiving. Hiatt said he did not need a union for a partner, that he was going to run his own business and no one was going to tell him how to do it. Hiatt also said that, if they would reconsider and vote against the Union, they would get better equipment and perhaps two men to a job instead of one, and he would consider giving them a raise at the first of the year. Hiatt further asked why those who wanted to go union did not go get themselves a union card and go work at Hanford. He then said, "They won't give you one anyhow; they are just using you. They will just give you a white ticket and work you for a week or two and then let you go."

Zike testified that Hiatt said he could not afford to go union because if he paid union scale he could not compete with other shops in the area. They discussed why the employees wanted union representation, that they wanted better wages. Hiatt said that, at the first of the year, they were supposed to receive a wage increase but that the union matter had jeopardized this, that it might be considered a bribe. Zike said that since Respondent's bids were so close to those of union shops he could not see why Respondent could not afford to pay union wages and still be competitive. Hiatt said that, whether they voted to go union or not, he was not going to go union. Hiatt also said he did not want to get a lot of work in and have the employees go out on strike so there would be no workmen to do the jobs. Zike said he understood this to mean that Respondent would not bid jobs until the union matter was settled.

Zike testified that he does not remember if anyone asked why they wanted a union. The discussion was more why they wanted a raise. Although Hiatt testified, he did not testify in regard to this meeting. I credit Hughes and Zike. I found them to be honest, reliable witnesses whose testimony was in substantial agreement. I further find that a composite of their testimony more accurately reflects what occurred.

On November 18 or 19, George Elgin, business manager and chief executive officer of the Union, and Union Business Agent Forrest Baugher met with Hiatt in their first contract negotiation session. According to Baugher, they discussed the industry generally. At that time, Hiatt was primarily engaged in the residential market where financing had become highly competitive. Hiatt spoke of the housing market and the financial problems in the

residential area. He said he was beginning to engage more in the commercial field and was becoming a bigger contractor. Baugher said they could have a lot of meetings starting with outrageous proposals and eventually work down to something in the neighborhood of the agreements with the other commercial contractors with whom Respondent would be competing. According to Baugher, Hiatt asked to see an agreement and Baugher gave him the Union's standard area commercial agreement. Hiatt said he would like an opportunity to read the standard agreement. Baugher said the agreement was what the union contractors in the area were working under and that was what the Union would like to have. He said they could talk a while on the subject, that the Union wanted to have an agreement similar to the standard area agreement. The meeting lasted 15 to 30 minutes. Elgin mentioned that the International union had to approve any agreement.

Elgin testified that he does not recall very much about this meeting. He does recall that wages were discussed and that Hiatt said, considering the market he was in, \$8 an hour was the top wage that Respondent could pay. They then began discussing the electrical market in the area and the type of electrical business in which Respondent was engaged. Baugher gave Hiatt a copy of the Union's standard area commercial agreement. Hiatt said that, if his employees wanted to be union, they should go to work for a union employer. At the end of the meeting, Elgin said, "It appears to me that you are not interested in an agreement with Local 112." Hiatt replied, "Well, I don't know as I would put it that way but this is true."

Hiatt testified that the meeting began with an exchange of pleasantries and then they began talking about the union contract. One of them gave him a copy of the Union's standard area contract. Baugher asked if Hiatt was ready to sign a contract. Hiatt replied, "Were you willing to sign our contract." Baugher tapped his finger on the Union's standard area contract and said, "You know that we can't accept anything except what is in this area contract because the international office wouldn't approve it." Hiatt referred him back to the offer that Respondent had made and asked if Baugher was willing to sign Respondent's contract. Baugher said he could not do that.

Hiatt also testified that at one of the meetings he said \$8 an hour was the maximum wage he could afford to pay journeyman electricians and remain competitive. He further testified that he said he was not making any money in the electrical contracting business. Hiatt does not specifically deny that he said that, if the employees wanted to be union, they should go to work for a union employer nor does he deny that he agreed that he was not interested in signing a contract with the Union.

I do not credit Hiatt's version of what was said. According to him, the principal exchange consisted of Baugher insisting that the Union would only agree to the standard area agreement whereas Hiatt kept asking if the Union would sign Respondent's proposal. Yet Hiatt never submitted a proposal until the second meeting. On the other hand, Baugher impressed me as an honest, reli-

² On October 24, the parties entered into a Stipulation for Certification upon Consent Election in which it was agreed that the foreman and the estimator would be excluded from the unit.

able witness and, although Elgin could not recall much of what was said, his testimony tended to be corroborative of that of Baugher. Also, where Elgin testified to statements which were not included in Baugher's account, Hiatt either admits that the statement was made in one of the meetings or he does not deny the statement. I credit Baugher and Elgin and find that a composite of their testimony more accurately reflects what was said at this first negotiation session.

Zike's undenied testimony, which I credit, is that, about a week after the election when he was in Hiatt's office on another matter, Hiatt asked if Zike had received his union card since they had voted the Union in. Zike said he had not. Hiatt asked when was Zike going to receive it or if he was. Zike said he did not know when he was supposed to get it or whether he was going to get it. Hiatt said Respondent was not going to go union and Zike was wasting his time waiting around for Respondent to go union; that if Zike wanted to make more money, he should get his card from the union hall and go to work or either go out to Hanford because "you did not have to be a union electrician to work at Hanford." Hiatt also asked if the employees were going to go on strike or what they were going to do, and if they had talked to the Union at all on what they were going to do after the election.

Hughes creditably testified, without contradiction, that, a couple of times both before the election and within the first 2 weeks following the election when he was waiting outside for his ride home, Hiatt came out and talked to him.³ Hughes made no attempt to separate these conversations in his testimony. According to him, Hiatt said, "We would like to know how you guys are going to vote, if you are going to go union or what." The employees never answered. Hiatt also said, "Why don't you go down to the Union and get a union card, they won't give you one." Hiatt further said he would not go union, he would go out of business before he would go union. He also said he was going to get new and better equipment and work two men on a job so that working conditions would not be as difficult.

Hughes was laid off on or about November 30. Three to five days later, Hughes went to see Hiatt. According to Hughes' undenied testimony which I credit, he asked Hiatt how it was going. Hiatt said, "pretty slow." Hughes asked if Hiatt thought he would need Hughes later. Hiatt said that, if Respondent got more work, he would call Hughes. They continued to talk for a few minutes. Then Hiatt said he would never go union, that he would go out of business first. He asked why Hughes did not go to Hanford to work, that there were some nonunion contractors there. Hughes said he did not think there were. Hiatt said yes, he knew of some working out there. Then Hiatt said, "Well, why don't you go down to the union hall and get a card from them and go to work. They are just using you. They won't give you a card anyway. They will probably give you a white slip or something like that." Hiatt further said he would quit

bidding and go out of business before he would join the Union.

Baugher, Elgin, and Hiatt met a second time on December 17 or 20. According to Baugher, he asked Hiatt if he had a chance to look at the area agreement. Hiatt said, "Yes, I have. I don't want it. I can't afford it." Baugher said the employees had selected the Union as their collective-bargaining representative. Hiatt replied, "Well, if they want you to represent them, then they can go down and go to work for you because they are not going to get a union here and if they want a union they can go down and work at Hanford and go down to the union hall. Baugher said Respondent's employees wanted the wages that the other electricians in the area to whom they were talking were getting. Baugher said Respondent was moving into a different field, commercial work, whereas previously he had been operating in the residential area; and that he thought Respondent should take a look at the commercial agreement, that the prevailing wage rate was more prevalent with commercial work and, if he was going to get into commercial work, he should pay area standard wages.

Baugher further testified that Hiatt asked them to take a look at his proposal, a mimeographed document which he gave them during this meeting. The first page had a clause which permitted an employee to either join or not join the Union. Baugher said this was not a right-to-work State and the Union could not agree to that type of language and the wages were only half that of area standard wages. At some point, Hiatt said, "I can't compete with all of the people in the area." Baugher or Elgin said there were contractors that had been in the area for 30 or 40 years who were using the Union's standard area agreement. Hiatt said, "Well, if I can show you right now, right in my books here today that I am not making any money, will you just go away and forget it?" Baugher said he could not forget it, that he would have to talk to the employees because they were the ones who had selected the Union to represent them.

Again Elgin does not recall much of the meeting. According to him, the economy and the local market were discussed. Hiatt said it was difficult to make any money, that at the rate he was paying now he was having trouble and under a union agreement he did not see how he could operate with the customers he presently had and the market in which he was doing business. There were some comments regarding union employers underbidding Respondent on jobs. Hiatt said he did not understand how they could do that with the union agreement. They then discussed productivity and management's responsibility in handling various jobs. Hiatt said he felt his management was just as good as the union employers' and his method of buying material was just as good. Hiatt again mentioned the hard time he was having and indicated that he might get out of the electrical contracting business.

Hiatt testified that the December meeting began with an exchange of pleasantries. Then he was asked if he would sign the Union's standard area agreement. Hiatt said he was in a position where he could not sign that agreement. At some point, Baugher said there was no

³ Although it is not absolutely clear from the record, it appears that on at least one of these occasions other employees were present.

way the Union would sign anything other than the standard area agreement, that the International had to approve any agreement and it would not approve anything other than the standard agreement. Hiatt asked if the Union would sign Respondent's proposed agreement. One of the union representatives said, "I can see that probably you don't want to talk to us anymore." Hiatt said that was not what he had in mind, that they could go on negotiating. The union representative said, "No, you don't." Hiatt said, "Well, yes, I do." The union representatives then stormed out of the office.

This account of the meeting was given by Hiatt when he testified on direct examination in the presentation of Respondent's case, at which time he testified that he could not recall anything else that was said. However, earlier when called as an adverse witness by counsel for the General Counsel, he admitted that he asked that, if he could prove he was not making money in the electrical contracting business, would the Union drop the matter. He also admitted that he said he had looked through the Union's standard area contract and he could not afford the wage scale in that contract.⁴ He further explained that there were about 30 nonunion contractors competing against him in the area and asserted that he could prove that there were about 29 other contractors in the area who were paying lower wages than Respondent.

Hiatt also admitted that he said he could not pay the union rates and stay in business, that if he had to pay the wages in the standard area contract, he would "go broke." He further said that he could show the Union, according to his profit structure, that if he paid the wages in the standard area contract, he would "go down the tubes." Hiatt said he had made the Union an offer and that was what he could live with. Baugher and Elgin deny stating that the Union would not sign, nor the International approve, anything other than its standard area agreement. However, Elgin admits that all the electrical contractors in the commercial field with whom the Union has a collective-bargaining agreement are either parties to the standard area agreement negotiated on their behalf by an employer association or are signatories to a letter of assent whereby they agree to be bound by said agreement. Elgin further admits that this is the agreement the Union always seeks due to the requirements of the pension trust fund and a most-favored-nations clause in the standard area agreement. He denies that the Union is required to submit all contracts to the International for approval, although it is recommended. In view of the admissions made by Hiatt which tend to corroborate Baugher and Elgin and in view of my credibility findings in other regards, I credit Baugher and Elgin and find that a composite of their testimony more accurately reflects what was said.

On January 21, Hiatt sent a written contract proposal to the Union which reflected the then-existing wages and terms and conditions of employment of Respondent's employees, along with a letter, the body of which reads:

⁴ The journeyman wage rate in the Union's standard area agreement is \$14.37 an hour for 1979 with an expiration date of June 30, 1979.

There seems to be a misunderstanding. We cannot afford your area contract, and we do not agree to many of its provisions.

However, as I told you in our December 17 meeting, we will make a fair offer and we will bargain in good faith.

Enclosed is a proposal for a complete contract. We are willing to discuss this with you at our mutual convenience.

Please call me if you want to negotiate.

On February 27, Baugher went to Hiatt's office and spoke to Hiatt. According to Baugher, he said that, every time they met in the past, it boiled down to economics so he would like to set up a meeting to see if things were really as bad as Hiatt said, to see if Respondent was a success. Baugher said he had contacted the Union's accountant to advise him that there would be a possible meeting to look at Respondent's books. Hiatt said, "Nobody looks at my books. I'm tired of your bullshit. Get the hell out of here. I don't want to see you no more." Baugher stepped outside of the door and said, "The employees have selected us to represent them about wages, hours and conditions and I am sure their voice will be heard." Hiatt kicked the door shut and Baugher left.

Hiatt does not specifically deny most of Baugher's version of the conversation. According to him, however, Baugher made no mention of an accountant. He simply announced, in a belligerent manner, that he was there to see about opening Respondent's books. Hiatt replied, "I don't think you are going to open up my books." They exchanged a few words. Hiatt asked him to leave and Baugher left. Hiatt did not testify as to what words were exchanged. I credit Baugher.

On March 3, Hiatt sent another letter to the Union, the body of which reads:

We told you in our December 17, 1979 negotiation meeting that we would make a fair offer and we will bargain in good faith.

On January 21, 1980, I sent to you a complete proposed contract. Our proposal covered many subjects of wages, hours, and working conditions. If you had signed our proposal we would now have a contract which would be fair to both sides and to the men.

We met again to discuss our proposal. You insisted that we sign your "area contract." We told you that there are many portions of your area contract that we do not agree to, could not live with, and that we would get few, if any, jobs if we had to pay the wages and fringe benefits that you insist upon.

It is obvious that you have not bargained in good faith, by continuing to insist upon your "area" contract.

In preparing our offer, we looked at the type of jobs we do, the highly competitive work we do, our present wage rates, the increase in the cost of living, the federal government's wage guidelines, the wages and fringe benefits paid by our competi-

tors, and our desire to make a small profit, to continue to do jobs, and to keep our men working.

Based upon all of the above and other factors, we believe that our offer is fair. It is our final offer. Since you have insisted upon your "area" contract, we are at a clear impasse.

We see no reason to meet again unless you indicate that you will accept our offer or something very similar to it.

Since we are not declining to offer more money only because we cannot afford it, we see no reason to open any "books" for inspection.

Let us know if you are willing to accept our offer. If not, we see no need to meet again.

Hiatt testified that, at a subsequent time, the specific date of which he does not recall, he notified the Union that Respondent would agree to permit someone from the Union to look at Respondent's books provided they did not make any copies or take notes. This offer was repeated to the Union's attorney in September, during the week prior to the hearing herein.

According to Hiatt, this ban on copies and notes was necessary in order to preserve the confidentiality of Respondent's profit structure. Specifically, he was concerned that Respondent's competitors might learn the distribution of expenses to particular type work or jobs. However, he testified that Respondent's financial records consist of accounts receivable, accounts payable, a general ledger, and a profit-and-loss statement and that the profit-and-loss statement was what he considered confidential, information from which would aid Respondent's competitors. He admits, however, that the profit-and-loss statement does not indicate specific amounts for specific jobs. According to him, he would deem it sufficient for the Union's accountant to look at Respondent's books, satisfy himself as to what the books showed as to matters of interest to the Union, and then go back to the Union and relate "yes or no" as to whatever the question was for which the Union sought an answer.

B. Conclusion

It is well settled that an employer violates Section 8(a)(5) of the Act when it mechanically repeats a claim of inability to pay without making the slightest effort to substantiate the claim or to permit independent verification. The rationale, as stated by the Supreme Court, is that "Good-faith bargaining necessarily requires that claims made by either bargainer should be honest claims." This is true about an asserted inability to pay an increase in wages. If such an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy. *N.L.R.B. v. Truitt Manufacturing Co.*, 351 U.S. 149, 152-153 (1956). Further, in the area of wages and other economic issues only the employer has control of sufficient accurate and detailed data necessary for the union to make a reasoned evaluation of the employer's claims. *Stamco Division of the Monarch Machine Tool Company*, 227 NLRB 1265 (1977).

I find no merit in Respondent's contention that it did not assert financial inability to meet the Union's propos-

als. Hiatt admittedly stated in negotiations that he could not afford to meet the Union's economic proposal. He also repeated this assertion in his January 21 letter and he repeatedly made statements to the effect that agreeing to the Union's economic proposal would so compromise Respondent's competitive position that it would be forced out of business.

In these circumstances, I conclude Respondent did claim financial inability to comply with the Union's wage and other economic demands. I further conclude that, by insisting that the Union's accountant could have access to its financial records only if no copies of its records were made and no notes taken as to their contents, Respondent placed such unreasonable conditions upon its furnishing of such information as to negate the effectiveness of such access.

Accordingly, I find that Respondent refused to bargain in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act by refusing to allow the Union reasonable access to its books and records containing financial information relevant to substantiate Respondent's claim of its financial inability to meet the Union's economic demands.

I also find that Respondent through Hiatt violated Section 8(a)(1) of the Act by interrogating employees as to their union activities and whether they intended to vote for the Union; by threatening employees that Respondent would go out of business if they selected the Union as their collective-bargaining representative; by promising employees better wages, equipment, and other working conditions if they withheld their support from the Union; and by telling employees that their union activities were jeopardizing a planned wage increase.

CONCLUSIONS OF LAW

1. Respondents Hiatt General and Hiatt Electric are joint employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All electrical worker employees of Respondent at its Yakima, Washington, operations, excluding estimators, clerical employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the Union has been, and is now, the exclusive collective-bargaining representative of the employees in the appropriate unit within the meaning of Section 9(a) of the Act.

5. By interrogating employees as to their union activities and whether they intended to vote for the Union; by threatening employees that Respondent would go out of business if they selected the Union as their collective-bargaining representative; by promising employees better wages, equipment, and other working conditions if they withheld their support from the Union; and by telling employees that their union activities were jeopardizing a planned wage increase, Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

6. By refusing to allow the Union reasonable access to its books and records containing financial information relevant to substantiate its claim of its financial inability to meet the Union's economic demands, Respondent has refused to bargain in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes of the Act.

Having found that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with certain financial information, I shall recommend that, upon request and within a reasonable time, Respondent allow the Union reasonable access to its books and records containing financial information relevant to substantiate its claims of financial inability to meet the Union's economic demands.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER⁵

The Respondent, Hiatt General, Inc. d/b/a Hiatt Electric-Hiatt Plumbing and Respondent Hiatt Electric, Inc., herein collectively called Respondent, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the Union as the exclusive collective-bargaining representative of all employees in the appropriate unit by refusing to furnish

the Union with requested financial information in order to substantiate Respondent's claim that it was financially unable to meet the Union's economic demands.

(b) Interrogating employees as to their union activities and whether they intended to vote for the Union.

(c) Threatening employees that Respondent would go out of business if they selected the Union as their collective-bargaining representative.

(d) Promising employees better wages, equipment, and other working conditions if they withheld their support from the Union.

(e) Telling employees that their union activities were jeopardizing a planned wage increase.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Upon request, and within a reasonable time, supply the Union, its auditors, and accountants, with all books and records containing financial information relevant to the substantiation of Respondent's claim that it is financially unable to meet the Union's economic demands.

(b) Post at its facility in Yakima, Washington, copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

⁵ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."